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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/693,363 | 10/24/2003 | Keith G. Lintott | 10451.0056.NPUS01 | 3124 |
| 27194 | 7590 | 07/27/2004 | EXAMINER | |
| HOWREY SIMON ARNOLD & WHITE, LLP C/O M.P. DROSOS, DIRECTOR OF IP ADMINISTRATION 2941 FAIRVIEW PK BOX 7 FALLS CHURCH, VA 22042 | | | HWU, JUNE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1661 | |
| DATE MAILED: 07/27/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|---|---------------------|
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EXAMINER

ART UNIT PAPER

072104

DATE MAILED:

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Commissioner for Patents

REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

An issue of public use or on sale activity has been raised in this application. Applicant should give evidence why the Garden Mum Catalog distributed on October 17, 2001 was not an offer for sale. Applicant should also indicate whether the claimed plant was ready for patenting, more than one year prior to the effective filing date of this instant application (see MPEP 2133.03(c) I). In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows:

1. The relationship between Royal Van Zanten and Ball Seed Company. It is not clear whether Royal Van Zanten controls Ball Seed Company. In addition, it is uncertain if Ball Seed Company buys or merely distributes the claimed invention.
2. It appears the catalog constitutes an offer for sale to Ball Seed Company because the catalog was presented at a conference on October 17, 2001 (disclosed in the IDS filed June 9, 2004, page 2 and the Hesse declaration, page 1). Also, Applicant states that the catalogs did not include any pricing information and if that information is needed the potential customers may contact Ball Seed or Royal Van Zanten for prices (page 3 of IDS, page 2 of the Hesse declaration, and Gardenmum Catalog 2002, page 16).
3. It is uncertain if the sales representatives of Ball Seed Company at the conference in Chicago on October 17, 2001 were able to place orders of the claimed plant more than one year prior to the effective filing date of the instant application.
4. In the IDS on page 2 and the Hesse declaration on page 1, they state that Royal Van Zanten sold its varieties to "select few customers directly". It is unclear if the claimed plant was for sale more than one year prior to the effective filing date of this instant application.
5. It is unclear if the catalog represented ~~any offers~~ for sale. It is also unclear whether any orders for the plant were received prior to October 24, 2001 and whether any acceptance of any offer was made.

The information is required to clearly explain if the claimed plant was offered for sale prior to the effective filing date of the instant application.

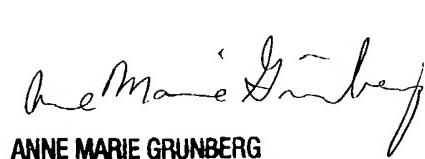
In response to this requirement please provide any information available regarding the sale or other public distribution of the claimed plant variety anywhere in the world, including the date(s) of any sale or other public distribution.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The rejection of claim 1 under 35 U.S.C. 112, first and second paragraphs, (March 9, 2004) is withdrawn in view of Applicant's amendment filed June 9, 2004.



ANNE MARIE GRUNBERG
PRIMARY EXAMINER